



BILLING CODE: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 225

RIN 0584-AD84

Simplified Cost Accounting and Other Actions to Reduce Paperwork in the Summer Food Service Program and National School Lunch Notice Procedures

AGENCY: Food and Nutrition Service (FNS), USDA

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend the Summer Food Service Program (SFSP) regulations to incorporate changes mandated by Section 738 of the Consolidated Appropriations Act, 2008. The changes extend simplified cost accounting and reporting procedures to SFSP sponsors in all States, and eliminate the cost comparison requirements for determining payments to sponsors. This rulemaking would amend SFSP regulations to address these statutory changes. In addition, this rulemaking proposes several discretionary changes to improve administrative efficiency and reduce paperwork in the management of the SFSP. The intended effect of this rulemaking is to simplify and streamline administration while ensuring the integrity of the Program. Finally, this rulemaking proposes a change to the National School Lunch Program regulations to create consistency among the Child Nutrition Programs with regard to notice procedures.

DATE: To be assured of consideration, written comments must be received or postmarked on or before [insert date that is 90 days after publication in the FEDERAL REGISTER].

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule.

Comments must be submitted through one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Address comments to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 1206, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

Comments submitted through either of these methods will be included in the record and available for public review. Comments submitted through any other methods will not be accepted and subsequently, not posted.

Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available through the Federal eRulemaking Portal at <http://www.regulations.gov>

FOR FURTHER INFORMATION CONTACT: Julie Brewer at the above address or telephone (703) 305-2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Summer Food Service Program (SFSP) is authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1761. Its primary purpose is to provide free, nutritious meals to children from low-income areas during periods when schools are closed for vacation. The Department is committed to reducing barriers to SFSP participation. One such barrier identified by Program operators is the administrative. To address this issue, the Department has explored ways to streamline the administrative paperwork burden of SFSP sponsors and State agencies so more time and resources are directed toward increasing access, providing quality meal service to benefit eligible children, and ensuring Program integrity. To that end, this rule proposes to codify the nondiscretionary simplified cost accounting and reporting procedures established in the Consolidated Appropriations Act, 2008 (Public Law 110-161), and make discretionary changes to the SFSP regulations to improve management of the Program and reduce paperwork requirements.

SFSP pilot projects were originally authorized by an amendment to Section 18 of the NSLA, 42 USC 1769, in the Consolidated Appropriations Act, 2001. The pilot projects, to be carried out from fiscal year 2001 through 2004 in 14 States (including Puerto Rico), were intended to increase the number of children participating in SFSP in States with low participation rates. The pilot projects allowed the Secretary to provide sponsors with a simplified reimbursement based on the number of meals served rather than requiring cost records to establish the reimbursement. Eligible pilot project participants included government sponsors, public and private nonprofit school food authority sponsors, public and private nonprofit National Youth Sports Program sponsors, and public and private nonprofit residential camp sponsors. All other private nonprofit organizations were prohibited from participating in the pilot projects.

In Section 116(f) of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265), Congress made these pilot projects permanent as the “Simplified Summer Food Program” and added six more States. Subsequently, the Simplified Summer Program procedures were extended to all private nonprofit sponsors in eligible States. Finally, the Consolidated Appropriations Act, 2008, extended the simplified procedures to all sponsors in all States.

This proposed rule is consistent with the simplified cost accounting and reporting procedures established in Section 13 of the NSLA by law. In implementing the statutory changes, FNS issued the following policy guidance: Implementation of the Summer Food Service Program Pilot Projects Authorized by the Consolidated Appropriations Act, 2001, January 19, 2001; SFSP 01-05: Simplified Summer Food Program, December 2, 2004; Transmittal of Guidance on the Simplified Summer Food Program, June 29, 2005; SFSP 01-2008, Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures, January 2, 2008; and SFSP 03-2008, Simplified Procedures in the Summer Food Service Program, February 14, 2008.

FNS also conducted conference calls with State agencies to support the implementation of the simplified cost accounting procedures. In December 2008, FNS held a conference for SFSP State agencies and sponsoring organizations. FNS issued policy guidance, SFSP 03-2009, Transmittal of Guidance – Questions and Answers, September 24, 2009, to address questions about the simplified procedures that arose at the conference. On November 23, 2012, FNS updated this guidance by issuing SFSP 05-2012, Summer Food Service Program Questions and Answers.

The Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296) (HHFKA) included additional changes to the SFSP, which became effective October 1, 2012 and included removal of limits on the participation of private non-profit organizations and a requirement for permanent agreements between sponsors and the State agencies. FNS is addressing these both of these provisions in a final rule, Child Nutrition Programs: Nondiscretionary Amendments Related to the Healthy, Hunger-Free Kids Act of 2010. Amendments made by HHFKA also required FNS to establish a disqualification process for SFSP, which we are addressing in a separate proposed rule, Child Nutrition Program Integrity.

II. Simplified Cost Accounting and Reporting

The purpose of the simplified procedures is to encourage more organizations to provide meals to children through the SFSP. By reducing reporting requirements, ensuring the maximum level of per meal reimbursement, and providing greater flexibility in the use of Program funds for any allowable cost, more local organizations may choose to participate or expand current operations and thereby reach more children.

Before implementation of the simplified cost accounting procedures, the SFSP statutory and regulatory framework required State agencies to reimburse participating sponsors on a per-meal basis for meals meeting Program requirements and served to eligible children. Reimbursement was made for both operating costs (costs incurred for preparing, obtaining, delivering, and serving meals) and administrative costs (costs incurred for planning, organizing, and administering the Program). The reimbursement rates for each cost category were separate. Because operating and administrative costs were considered distinct categories, claims for costs

incurred in each category could not be combined. Reimbursements were calculated separately as well. For operating costs, sponsors were paid the lesser of either the actual documented food service costs or the sum of the number of meals served to eligible children times the operating payment rate. For administrative costs, sponsors were paid the lesser of the actual documented administrative costs, the number of meals served to eligible children times the administrative payment rate, or the amount specified in the sponsor's approved budget.

Under the simplified cost accounting procedures, all sponsors now receive the maximum "meals times rates" combined operating and administrative reimbursement without regard to their actual or budgeted costs. Sponsors may use the combined reimbursement to pay for any allowable cost, whether operating or administrative, defined in SFSP regulations at 7 CFR 225.2. This proposed rule would codify the elimination of the cost comparison requirements at 7 CFR 225.9(d)(7) and 225.9(d)(8).

In keeping with the simplified cost accounting structure, this rule also proposes to streamline the process for calculating advances. Currently, advance payments made under 7 CFR 225.9(c) are divided between those made for administrative costs and for operating costs. Because reimbursements are no longer allocated separately, this rule proposes combining advances as well. Accordingly, as proposed, 7 CFR 225.9(c) would no longer differentiate between advances for administrative costs and those for operating costs. The proposed rule would allow sponsors to request from the State agency a single combined advance to be provided at the same intervals as under current Program regulations.

III. Program Management

With increased flexibility in Program administration, however, also comes an increased risk of Program mismanagement. Therefore, this proposed rule also addresses State agency and sponsor management and oversight responsibilities under the simplified cost accounting procedures. The following issues are addressed by this proposed rule: budget submission, nonprofit food service requirements, use of excess funds, and State agency monitoring.

Budget Submission

Although SFSP sponsors are no longer required to report actual or budgeted costs, an annual budget submission continues to be an important aspect of participating in the SFSP. Current regulations require all SFSP sponsors, unless exempted, to submit budgets annually with their applications for participation as specified in 7 CFR 225.6(c)(2)(ii)(B) and (c)(3)(ii)(B) and to receive start-up or advance payments as specified in 7 CFR 225.9(a) and (c)(2)(i). The budget must contain enough information to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement.

This rule proposes to amend 7 CFR 225.6(b)(7) to allow State agencies to exempt from the annual budget submission requirement school food authority (SFA) sponsors that participated successfully in the SFSP in the previous year and have had no documented serious problems managing the SFSP or National School Lunch Program (NSLP). However, school sponsors that do not meet these criteria, including those with a break in participation of one or more years, must submit an annual budget. School sponsors that are exempted from submitting a budget should recognize that they will not have the advantage of State agency budget review to

determine the allowability of planned expenditures. Unallowable costs that would be identified during the budget submission and amendment process may go undetected by the State agency until a review and/or audit is conducted. For this reason, State agencies that elect to waive the budget requirement for experienced SFA sponsors should emphasize the importance of using funds only for allowable costs, and State agencies should remind these sponsors of their liability with regard to any costs that are subsequently determined to be unallowable.

Nonprofit Food Service

Sponsors that operate multiple Child Nutrition Programs on a year-round basis are not required to maintain a separate nonprofit food service account for the SFSP. SFSP reimbursements and expenditures may be included in a single account with funds from any other Child Nutrition Programs authorized under NSLA, 42 U.S.C. 1751 et seq., or the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq., except the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), 42 USC 1786. However, this rule proposes to amend 7 CFR 225.15 to require sponsors to maintain documentation confirming the operation of a nonprofit food service.

Sponsors currently receive a flat reimbursement rate per reimbursable meal served, in accordance with statutory changes. Sponsors are still required, however, to use the reimbursement received only for allowable costs. By requiring documentation of a nonprofit food service, State agencies will have the ability to ensure that SFSP funds are being properly expended.

The sponsor's documentation of nonprofit food service should enable the State agency to determine whether or not all costs charged to the food service were allowable and all funds

accruing to the food service were properly identified and recorded as food service revenue. This rule also proposes to clarify 7 CFR 225.12(a) and 225.15(c), which state that only allowable costs may be paid using SFSP reimbursements. Further, sponsors must maintain records of all costs associated with the meal service and document that all costs are allowable. If it is determined that the sponsor has used SFSP funds for unallowable costs, the State agency is required under 7 CFR 225.12 to disallow any portion of a claim for reimbursement and recover from the sponsor any amount of funds not properly paid.

Excess Funds

Program reimbursements are now made on a “meals times rates” basis and the funds provided are intended to be expended on the SFSP meal service or other Child Nutrition Programs administered by the sponsor. Operation of a nonprofit food service requires sponsors to monitor all program costs and revenues. In addition, sponsors must use reimbursement to improve the meal service or other aspects of the food program if costs are less than the anticipated reimbursement. This rule proposes to amend 7 CFR 225.9 to require sponsors to use reimbursements that exceed their costs to improve the meal service or management of the Program or to pay allowable costs of other Child Nutrition Programs operated by the sponsor. If a sponsor does not intend to continue participation in the Program and does not operate other Child Nutrition Programs, excess Program funds would have to be collected by the State agency and returned to FNS in accordance with 7 CFR 225.12.

State Agency Monitoring

With the implementation of the simplified Program requirements, it is critical that State agencies and sponsors practice sound Program management to ensure integrity. This will require careful selection of applicants and dedicated training efforts, especially those directed at new sponsors. Additionally, State agencies must initiate diligent review of the budgets, monitoring of Program operations, and prompt follow up where problems are found.

With this in mind, and in keeping with the nonprofit food service requirements discussed above, this rule proposes to amend 7 CFR 225.7(d) to establish the responsibilities of State agencies when reviewing a sponsor's operation under simplified procedures and to require State agencies to closely monitor the sponsor's use of funds when questions arise about whether the sponsor is maintaining a nonprofit food service. Under the proposed rule, during sponsor reviews, the State agency would be required to:

1. Ensure that all expenditures charged to the food service were allowable and consistent with FNS instructions and guidance and all funds accruing to the food service were properly identified and recorded as food service revenue. Additionally, the State agency should consider whether or not expenditures are reasonable when compared to previous years, the expenditures of comparable sponsors, and/or budgeted costs. If it is determined that the sponsor used SFSP funds for unallowable expenses or that the expenditures were unreasonable, the State agency would assess a claim against the sponsor for the amount of funds spent inappropriately as required under 7 CFR 225.12.

2. Ensure that the net cash resources of the sponsor's nonprofit food service do not exceed three months' average expenditures. Similarly, the State agency would be required to assess the sponsor's budgeted and actual expenditures to determine if excess funds are likely to result. This

requirement is consistent with the limit on net cash resources in the NSLP. State agency approval is required for net cash resources in excess of three months' average expenditures.

3. Consider whether the sponsor is providing a nutritious, high quality food service that uses Program resources effectively. If the State agency review finds poor food quality, a high ratio of administrative to operational costs (as defined by 7 CFR 225.2) as compared to other similar sponsors, significant use of alternative funding for food costs, or a significant supply of privately donated food or very low cost food, the State agency may require the sponsor to improve food quality or take other action to improve the nonprofit food service. If the sponsor is operating a program with poor quality meal service and is operating below the reimbursement level, the proposed amendment to 7 CFR 225.11 would direct the State agency to require the sponsor to implement appropriate corrective action that improves the quality of the meal service.

In the scope of conducting reviews, State agencies would also be required to consider whether other areas identified by sponsor reviewers are being managed appropriately. In addition, this rule proposes to amend 7 CFR 225.7(f) to require that State agency systems and standards include monitoring and reviewing the institutions' nonprofit food service to ensure that all Program reimbursements are used solely for the conduct of the food service operation and the net cash resources of the nonprofit food service do not exceed three months' average expenditures.

IV. Additional Provisions

Small Purchase Procedures

Small purchase procedures are simple and informal procurement methods used to procure services, supplies, or other property that fall below the established threshold. SFSP regulations at 7 CFR 225.17(a) require that State agencies and sponsors comply with the procurement requirements of 7 CFR parts 3016 or 3019, as applicable.

Currently, the SFSP regulations contain procurement provisions that lack consistency in threshold applicability, specifically in terms of contract award amounts that trigger requirements to more strict standards. To eliminate contradictory requirements, we are proposing to eliminate the reference to a \$10,000 threshold in 7 CFR 225.15(m)(4). This provision provides an exception to competitive bidding procedures for sponsors whose total contracts with food service management companies will not exceed \$10,000. Because this exception refers to aggregate contracts not exceeding \$10,000, it has limited applicability. Further, this threshold conflicts with the threshold identified in 41 U.S.C. 403(11) and may cause confusion regarding the applicability of the procedures required under 7 CFR parts 3016 and 3019.

Therefore, the Department is proposing to amend 7 CFR 225.15(m)(4) by removing reference to a specific amount, and allowing State and local agencies to use the simplified acquisition procedures for small purchases up to the threshold set by 41 U.S.C. 403(11). This increase in the threshold will allow for more small purchase procurements to be conducted using informal methods for securing services, supplies, or other property [7 CFR 3016.36(d)] provided that each procurement, regardless of amount, is conducted in a manner that ensures free and open competition. It will also ensure that the small purchase threshold in SFSP remains consistent with the threshold applied to the other Child Nutrition Programs.

FNS issued guidance, SFSP 01-2013, Federal Small Purchase Threshold Adjustment, on October 2, 2012, to confirm that State and local SFSP agencies may use the simplified acquisition procedures for small purchases up to the threshold set by 41 U.S.C. 403(11). The current threshold set by 41 U.S.C. 403(11) is \$150,000.

Standard Contracts

Currently, 7 CFR 225.6(h)(2) allows sponsors with food service management company contracts that do not exceed \$10,000 in aggregate to use their existing contracts rather than the standard form of contract developed by the State agency. Consistent with the small purchase procedures, we propose to remove the existing limit and instead link the standard contract threshold to 41 U.S.C. 403(11). Because the threshold in 41 U.S.C. 403(11) is adjusted regularly, this change will ensure that the standard contract threshold in SFSP is adjusted regularly in line with the thresholds applied to the other Child Nutrition Programs.

We also propose to apply the threshold to individual rather than aggregate contracts. This would allow sponsors with individual contracts that do not exceed the small purchase threshold in 41 U.S.C 403(11), to use their existing or usual form of contract provided it has been submitted to and approved by the State agency. Any individual contracts that exceed the small purchase threshold in 41 U.S.C. 403(11), would require use of the State agency's standard contract. The original threshold was based on aggregate contracts and was set so low that it had little applicability. These proposed changes will bring the threshold in line with other regulatory requirements regarding approval of State bids and will simplify the contracting process for a greater number of small sponsors.

FNS has implemented these changes in policy guidance, SFSP Summer Food Service Program Standard Contract Threshold, on January 24, 2013. This guidance allows sponsors with individual contracts that do not exceed the small purchase threshold, which is currently set at \$150,000, to use their existing or usual form of contract, provided it has been submitted to and approved by the State agency.

Food Service Management Companies and Procurement Standards

We propose to amend the SFSP regulations at 7 CFR 225.6(h)(7) to include two provisions to ensure that SFSP is consistent with the NSLP with regard to requirements pertaining to food service management company contracts. The first provision would allow sponsors to enter into annual contracts that may be renewed for up to four additional years. This would simplify the procurement process for sponsors by allowing for annual renewal of existing contracts rather than requiring sponsors to enter into new contracts each year.

Additionally, the Department-wide regulations at 7 CFR 3016.36(i)(2) require subgrantees to include in each contract in excess of \$10,000 a clause for both termination for cause and for convenience. Therefore, we propose that all contracts in excess of \$10,000 contain clauses for termination for both cause and convenience. Specifically, food service management company contracts in excess of \$10,000 must include a termination clause whereby either party may cancel for cause with a 60-day notification. We also propose to amend the SFSP regulations regarding procurement standards at 7 CFR 225.17 to include this provision.

Administrative Oversight at Approved Meal Service Sites

FNS proposes to amend the SFSP regulations at 7 CFR 225.14(d)(3) to clarify sponsors' responsibilities with respect to the meal services at the approved meal service sites and to emphasize that sponsors must have administrative oversight of meal services. Currently, the SFSP regulations require sponsors to have direct operational control of meal service sites, meaning they are responsible for managing site staff, including such areas as hiring and determining conditions of employment and termination. Based on FNS' experience in administering the SFSP and consultation with local, State, and Federal administrators, the Department has determined that sponsors find it difficult to meet the current understanding of "direct operational control." Many sponsors deliver meals to recreational sites that are not directly affiliated with or managed by the sponsors and do not have the authority to hire or terminate employees at those sites. Instead, these sponsors have control over only the meal service provided at the site and related activities such as training of staff on meal counting and record keeping procedures.

To eliminate confusion over the responsibilities of SFSP sponsors, FNS proposes to clarify that sponsors must have administrative oversight of the meal service at approved sites by replacing the words "direct operational control" with "administrative oversight." FNS also proposes to clarify that "administrative oversight" means the sponsor is responsible for maintaining contact with meal service staff, ensuring that there is adequate trained meal service staff on site, monitoring meal service operations at the site throughout the period of Program participation, and terminating meal service at a site if staff at the site fail to comply with Program regulations.

Options to Submit a Combined Claim

SFSP sponsors represent a wide range of administrative and programming models, including schools that operate a year-round food service, churches that operate a food service only a few weeks in the summer months, civic organizations that operate many open sites, and camps that operate closed, enrolled sites. In view of these differences and to support their efforts in providing quality programs, this rule proposes to allow State agencies and SFSP sponsors more latitude to choose between submitting a monthly claim or a combined claim for reimbursement.

First, this rule proposes to make optional the current requirement in 7 CFR 225.9(d)(3) that sponsors operating for less than 10 days in the final month of operations submit a combined claim for the final and immediate preceding month. Submitting separate monthly claims enables some SFSP sponsors, especially those with a tight budget or that operate for very short periods of time during the summer, to receive their reimbursement in a more timely manner. The argument for the provision of separate claims is strengthened by technological advances that have made it possible for many State agencies to accept claims for the SFSP online through web-based reporting systems, enabling State agencies to process claims on a more frequent basis. This proposed rule allows State agencies to maximize system efficiencies permitted by these advances.

Second, sponsors that would like to submit combined claims are accommodated under this proposed regulation as well. In an effort to streamline Program operations and reduce paperwork for State agencies, and to provide sponsors with additional flexibility, FNS issued policy guidance on May 15, 2000, Summer Food Service Program—Authority for Sponsors to Combine

Claims for Reimbursement, allowing sponsors more alternatives to combine claims for reimbursement. Consistent with this earlier guidance, FNS proposes to amend SFSP regulations to permit sponsors to consolidate claims for reimbursement and submit a single claim for reimbursement in the following ways:

- Claims for 10 operating days or less in the initial month of operations may be combined with the claim for the subsequent month;
- Claims for 10 operating days or less in the final month of operations may be combined with the claim for the preceding month; and
- Claims for 3 consecutive months may be combined, as long as this combined claim only includes 10 operating days or less from each of the first and last months of Program operations.

This proposed regulation makes clear, however, that a sponsor may not claim meal reimbursements on one claim that crosses Federal fiscal years. In addition, State agencies must ensure that the correct reimbursement rates are applied for meals claimed for months when different reimbursement rates are in effect. For example, there are SFSP sponsors that operate from October through April to provide meal services during school vacations in year-round schools. Because the SFSP reimbursement rates are published annually and are effective from January 1 until December 31, State agencies must ensure that reimbursement rates for December and January are applied correctly when processing claims.

Definition of Delivery of Notice

Finally, this rule proposes to specify in NSLP regulations at 7 CFR 210.18(j) and in SFSP regulations at 7 CFR 225.13(b)(1) what constitutes proper delivery and receipt of a notice describing an action proposed or taken by a State agency or FNS that affects the Program reimbursement and participation of a school food authority, food service management company, or sponsor. Currently, only the CACFP regulations define notice and delivery by a State agency or FNS to an institution.

The CACFP regulation at 7 CFR 226.2 states that a notice is considered received by an institution when it is delivered or sent by facsimile or e-mail. If a notice is undeliverable, it is considered received by the institution five days after being sent to the last known mailing address, facsimile number, or e-mail address. FNS proposes to extend this definition to NSLP and SFSP, making it consistent across the Child Nutrition Programs. FNS is proposing this change because some State agencies are experiencing difficulties in notifying institutions of review findings, required corrective actions, and terminations. By choosing to avoid accepting the State agency's certified mail, non-complying institutions have continued to operate, claim reimbursement, and mismanage the Programs.

V. Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

In recent years, FNS has undertaken a number of paperwork reduction initiatives to attract additional sponsors in order to expand the Program to reach more children. This proposed rule will further reduce paperwork, ensure high quality administrative standards in the management of the SFSP, and clarify existing requirements. Since its creation through the Consolidated Appropriations Act of 2001, the simplified cost accounting procedures have been implemented through pilot projects and FNS guidelines. The Child Nutrition and WIC Reauthorization Act of 2004 made the simplified cost accounting procedures permanent and applicable to additional States. Various appropriations incrementally added States, which, by January 2006, totaled 27. The Consolidated Appropriations Act, 2008 extended the procedures to all States. This rulemaking brings the regulations into conformity with the legislative change.

Programming changes often occur with expansion and lessons learned through implementation. Likewise, FNS proposes revisions of the SFSP to reduce paperwork and increase efficiency. More schools will be encouraged to participate in the SFSP if they are able to receive their SFSP reimbursements as soon as their programs end. Also, FNS regulations must reflect how sponsors

operate and clarify that sponsors must have administrative oversight of the approved meal service sites.

Benefits

This proposed rule will make permanent the benefits both the SFSP sponsors and the administering State agencies have accrued under the January 2, 2008, policy implementing Program simplification and will result in additional benefits by further reducing paperwork and simplifying administrative requirements. The administrative burden on State agencies will be reduced by the elimination of annual budget reviews of school sponsors, and more importantly, simplification of the advance payment and reimbursement process for all sponsors.

Costs

This proposed rule, when published as a final rule, will codify guidelines governing existing simplified cost accounting procedures in the Program. Because most of the provisions are already in place, FNS anticipates no significant change in Program costs.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Pursuant to that review, it has been certified that this rule will not have a significant economic impact on a substantial number of small entities. SFSP sponsors may choose whether or not to expand their existing program to reach more children. The additional meal service will not have a significant paperwork or reporting burden because of the

simplified cost accounting procedures. Besides reducing paperwork burden, this rule will streamline requirements and allow flexibility to improve the management of the SFSP.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or Tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SFSP is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR

29115, June 24, 1983, this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published final, is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the SFSP, the administrative procedures are set forth at 7 CFR 225.13, which establishes

appeal procedures, and at 7 CFR 225.17, 3016, and 3019 which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300-4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts this rule might have on minorities and persons with disabilities.

A careful review of the rule’s intent and provisions revealed that the rule is not intended to affect the participation of protected individuals in SFSP. All data available to FNS indicate that protected individuals have the same opportunity to participate in the SFSP as non-protected individuals. The regulations at 7 CFR 225.7(g)(1) require that SFSP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, and the Department’s regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b). At 7 CFR 225.6(c)(4)(i), each sponsor applying to participate in the SFSP must submit a statement of nondiscrimination in its policy for serving meals to children.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a revision of a currently approved collection. This revision consists of the proposed rule, Simplified Cost Accounting and Other Actions to Reduce Paperwork in the Summer Food Service Program (SFSP) and National School Lunch Notice Procedures, to existing collection: 7

CFR part 225, Summer Food Service Program (SFSP), OMB Control Number 0584-0280, expiration date March 31, 2016. The current collection burden inventory for SFSP is 175,391. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the Federal Register announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by [insert date that is 60 days from date of publication in the FEDERAL REGISTER].

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Jon Garcia, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Jon Garcia at the address indicated above. Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Information Collection for the Summer Food Service Program (SFSP)

Form: FNS-418

OMB Number: 0584-0280

Expiration Date: March 31, 2016

Type of Request: Revision of a currently approved Collection

Abstract: SFSP is authorized under section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761). Its primary purpose is to provide free, nutritious meals to children from low-income areas during periods when schools are closed for vacation. To improve the efficiency of the Program, the Department is committed to reducing barriers to SFSP participation. One such barrier identified by Program operators is the paperwork burden involved in administering the Program. To address this issue, the Department has explored ways to streamline the administrative burden of SFSP sponsors and State agencies so more time and resources are directed toward increasing access, providing quality meal service to benefit eligible children, and ensuring Program integrity. To that end, apart from general program adjustments, this rule proposes to implement the simplified cost accounting and reporting procedures enacted by Congress in the Consolidated Appropriations Act, 2008 (Public Law 110-161) and make discretionary changes to the SFSP regulations to improve management of the Program and reduce paperwork requirements.

This proposed rule is consistent with the simplified cost accounting and reporting procedures established by law and implemented by FNS through policy memoranda. The Consolidated Appropriations Act of 2001 authorized SFSP pilot projects from fiscal year 2001 through 2004 in 14 States (including Puerto Rico) with the intent to increase the number of children participating in the Program in States with low participation rates. This provision applied to government sponsors, public and private nonprofit school food authority sponsors, public and private nonprofit National Youth Sports Program sponsors, and public and private nonprofit residential camp sponsors. The law specifically excluded all other private nonprofit organizations from the pilot projects. The Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265) made these pilots permanent, named the program “Simplified Summer Food Program,” added six additional States, and extended the simplified procedures to all private nonprofit sponsors in eligible States. Through various appropriations laws, Congress incrementally provided pilot authority to additional States. By January 2006, the Simplified Summer Food Program was extended to a total of 27 States. The Consolidated Appropriations Act, 2008 extended the simplified procedures to all sponsors in all States. As many provisions in the proposed rule aimed at reducing paperwork in SFSP along with program updates and reduction of administrative burden, this revision realized a reduction in the number of burden hours since last renewal. This revision also consists of corrections to the recordkeeping burden hours. The average burden per response and the annual burden hours for reporting and recordkeeping are explained below and summarized in the charts which follow.

Affected Public: State Agencies, Camps and Other Sites, and Households

Estimated Number of Respondents: 111,785

Estimated Number of Responses per Respondent: 6.042

Estimated Total Annual Responses: 675,390

Estimate Time Per Response: 0.219

Estimated Total Annual Burden: 148,207

Current OMB Inventory: 175,391

Difference (Burden Revisions Requested): -27,184

Refer to the table below for estimated total annual burden for each type of respondent.

REPORTING					
Affected Public	Estimated Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Estimated Total Hours per Response	Estimated Total Burden
State Agencies	53	381	20,193	0.722	14,588
Sponsors	4,754	2.80	13,357	1.693	22,608
Camps and Other Sites	791	1	791	.25	198
Households	100,589	2	201,178	.375	75,442
Total Estimated Reporting Burden	106,187	---	235,519	---	112,836
RECORDKEEPING					
Affected Public	Estimated Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Estimated Total Hours per Response	Estimated Total Burden
State Agencies	53	122	6,466	.081	525
Sponsors	4,754	91	432,614	.080	34,609
Camps and Other Sites	791	1	791	.300	237

Total Estimated Record keeping Burden	5,598	---	439,871	---	35,372
TOTAL OF REPORTING AND RECORDKEEPING					
	Estimated Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Estimated Total Hours per Response	Estimated Total Burden
Reporting	106,187	2.217965	235,519	.479095	112,836
Recordkeeping	5,598	78.57646	439,871	.0804137	35,372
Total	111,785	6.042	675,390	.219	148,207

E-Government Act Compliance

FNS is committed to complying with the E-Government Act, 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs-education, Grant programs-health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 225

Food assistance programs, Grant programs — health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210 and 225 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.18, remove the last two sentences of paragraph (j), and add, in their place, four new sentences to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(j) * * * This notice shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed. The notice is considered to be received by the school food authority when it is delivered by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by e-mail. If the notice is undeliverable, it is considered to be received by the school food authority, five days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.29(d)(3).

* * * * *

PART 225—SUMMER FOOD SERVICE PROGRAM

3. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

4. In § 225.6:

- a. Amend paragraph (b)(7) by adding three new sentences at the end of the paragraph;
- b. Add new paragraphs (b)(7)(i), (ii), and (iii);
- c. Amend paragraph (h)(1) by removing the citation “§§ 225.15(h)” and adding the citation “§§ 225.15(m)” in its place;
- d. Amend paragraph (h)(2) by revising the second sentence;
- e. Redesignate paragraph (h)(7) as paragraph (h)(8);
- f. Add new paragraph (h)(7); and
- g. Amend newly designated paragraph (h)(8) by removing the citation “§ 225.15(h)(1)” and adding the citation “§ 225.15(m)” in its place.

The revision and additions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(7) * * * State agencies may exempt school food authority sponsors that participated successfully in the Program in the prior year from the annual budget submission requirement. State agencies that elect to waive the budget requirement for experienced school sponsors must remind sponsors of the importance of using funds only for allowable costs. Those school sponsors that are not exempt and must submit an annual budget include:

- (i) First year school sponsors;
- (ii) Returning school sponsors that experienced a break in participation of one or more years;
- and
- (iii) School sponsors with documented serious problems in managing a child nutrition program.

* * * * *

(h) * * *

(2) * * * Sponsors that are public entities, sponsors with exclusive year-round contracts with a food service management company, and sponsors that have no food service management company contracts exceeding the small purchase threshold in 41 U.S.C. 403(11), as applicable, may use their existing or usual form of contract, provided that such form of contract has been submitted to and approved by the State agency. * * *

* * * * *

(7) The contract between a sponsor and food service management company shall be no longer than 1 year; and options for the yearly renewal of a contract may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

* * * * *

5. In § 225.7:

- a. Add paragraph (d)(2)(iii);
- b. Amend paragraph (f) by adding three new sentences at the end; and
- c. Add new paragraphs (f)(1) through (4).

The additions read as follows:

§ 225.7 Program monitoring and assistance.

* * * * *

(d) * * *

(2) * * *

(iii) Review of sponsor's operation. State agencies shall determine if:

(A) The sponsor is providing a nutritious, high quality food service that uses program resources effectively;

(B) Expenditures are allowable and consistent with FNS Instructions and guidance and all funds accruing to the food service are properly identified and recorded as food service revenue;

(C) Expenditures are consistent with the expenditures of comparable sponsors, budgeted costs, and the previous year's expenditures taking into consideration any changes in circumstances;

(D) Reimbursements have not resulted in accumulation of excess funds as defined in § 225.7(f);

(E) The level of administrative spending is reasonable and does not affect the sponsor's ability to operate a nonprofit food service and provide a quality food service; and

(F) Other issues identified by reviewers are being managed appropriately.

* * * * *

(f) * * * Additionally, each State agency shall establish a system for monitoring and reviewing institutions' nonprofit food service to ensure that all Program reimbursement funds are used solely for the conduct of the food service operation and the net cash resources of the nonprofit food service of each sponsor participating in the Program do not exceed three months' average expenditures. State agency approval shall be required for net cash resources in excess of three months' average expenditures. Based on this monitoring, the State agency may require the

sponsor to improve food quality or take other action designed to improve the nonprofit food service under the following conditions:

- (1) The sponsor's net cash resources exceed three months' average expenditures for the sponsor's nonprofit food service or such other amount as may be approved in accordance with this paragraph;
- (2) The ratio of administrative to operational costs (as defined in § 225.2) is high as compared to similar sponsors;
- (3) There is significant use of alternative funding for food and/or other costs; or
- (4) A significant portion of the food served is privately donated or purchased at a very low price.

* * * * *

6. In § 225.9:

- a. Revise the last sentence of paragraph (a);
- b. Revise introductory paragraph (c);
- c. Revise paragraph (c)(1);
- d. Remove paragraph (c)(2), redesignate paragraph (c)(3) as paragraph (c)(2), and revise the new paragraph (c)(2);
- e. Remove paragraph (c)(4);
- f. Redesignate paragraphs (c)(5), (c)(6), and (c)(7) as paragraphs (c)(3), (c)(4), and (c)(5), respectively;
- g. Amend paragraph (d)(2) by removing the words "projected administrative costs" wherever it appears and adding the words "projected expenses" in its place and by removing the words "advance administrative costs payment" and adding the words "advance payment" in its place;

- h. Revise paragraph (d)(3);
- i. Revise paragraph (d)(7);
- j. Remove paragraph (d)(8) ;
- m. Redesignate paragraphs (d)(9), (d)(10), and (d)(11) as (d)(8), (d)(9), and (d)(10), respectively;
- n. Amend newly designated paragraph (d)(8) by removing the citations “(d)(7)(ii) and (d)(8)(iii)” and adding in their place “(d)(7)”;
- and
- o. Add a new paragraph (g).

The revisions and additions read as follows:

§ 225.9 Program assistance to sponsors.

(a) * * * The amount of the start-up payment shall be deducted from the first advance payment or, if the sponsor does not receive advance payments, from the first reimbursement.

* * * * *

(c) Advance payments. At the sponsor’s request, State agencies shall make advance payments to sponsors that have executed Program agreements in order to assist these sponsors in meeting expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraph (c)(1) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) Payments. (i) State agencies shall make advance payments by June 1, July 15, and August 15. To be eligible for the second and third advance payments, the sponsor must certify that it is

operating the number of sites for which the budget was approved and that its projected costs do not differ significantly from the approved budget. Except for school food authorities, sponsors must conduct training sessions before receiving the second advance payment. Training sessions must cover Program duties and responsibilities for the sponsor's staff and for site personnel. A sponsor shall not receive advance payments for any month in which it will participate in the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance payment shall be made by August 15.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment:

(A) The total reimbursement paid to the sponsor for the same calendar month in the preceding year; or

(B) For vended sponsors, 50 percent of the amount determined by the State agency to be needed that month for meals, or, for self-preparation sponsors, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) Advance payment estimates. When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment exceed the greater of the amount estimated by the State agency to be needed by the sponsor to meet Program costs or \$40,000.

* * * * *

(d) * * *

(3) Sponsors shall submit a monthly claim or a combined claim within 60 days of the last day of operation. Sponsors may not submit a combined claim for meal reimbursements that crosses

fiscal years. In addition, State agencies must ensure that the correct reimbursement rates are applied for meals claimed for months when different reimbursement rates are in effect. Sponsors may combine the claim for reimbursement in the following ways:

- (i) For 10 operating days or less in their initial month of operations with the claim for the subsequent month;
- (ii) For 10 operating days or less in their final month of operations with the claim for the preceding month; or
- (iii) For 3 consecutive months, as long as this combined claim only includes 10 operating days or less from each of the first and last months of program operations.

* * * * *

(7) Payments to a sponsor must equal the amount derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the applicable reimbursement rate for each meal type. Sponsors must be eligible to receive additional reimbursement for each meal served to participating children at rural or self-preparation sites.

* * * * *

(g) Excess funds. If reimbursements exceed a sponsor's allowable costs, the sponsor must use the excess funds to improve the meal service or management of the Program. Excess funds remaining at the end of the Program year may be used to pay allowable costs of other Child Nutrition Programs. If the sponsor does not operate other Child Nutrition Programs, the State agency must collect from the sponsor any reimbursements that exceeded the sponsor's allowable costs. The excess funds shall be collected in accordance with the procedures outlined in § 225.12(b).

7. In § 225.11, revise paragraph (f)(1) to read as follows:

§ 225.11 Corrective action procedures.

* * * * *

(f) * * * (1) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific, immediate corrective action plan to be followed by the sponsor. If the State agency finds that a sponsor is operating a program with poor quality food service and is operating below the reimbursement level, the State agency shall require corrective action to improve the meal service. The State agency shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken.

* * * * *

8. In § 225.12, revise the second sentence of paragraph (a) to read as follows:

§ 225.12 Claims against sponsors.

(a) * * * State agencies shall consider claims for reimbursement not properly payable if a sponsor's records do not include all costs associated with the meal service and document that all costs are allowable. * * *

* * * * *

9. In § 225.13, revise paragraph (b)(1) to read as follows:

§ 225.13 Appeal procedures.

* * * * *

(b) * * *

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action shall also state that the sponsor or food service management company has the right to appeal the State's action. The notice is considered to be received by the sponsor or food service management company when it is delivered by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by e-mail. If the notice is undeliverable, it is considered to be received by the sponsor or food service management company, five days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address;

* * * * *

10. In § 225.14:

- a. Amend introductory paragraph (d)(3) by removing the words “direct operational control” at the end of the first sentence and adding in their place the words “administrative oversight” and removing the words “Operational control” at the beginning of the second sentence and adding in their place the words “Administrative oversight”; and
- b. Revise paragraph (d)(3)(i).

The revision reads as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(d) * * *

(3) * * *

(i) Maintaining contact with meal service staff, ensuring that there is adequately trained meal service staff on site, monitoring the meal service throughout the period of Program participation, and terminating meal service at a site if staff fail to comply with Program regulations; and

* * * * *

11. In § 225.15:

- a. Add paragraph (a)(4);
- b. Revise the first sentence of paragraph (c)(1); and
- c. Revise the second sentence of introductory paragraph (m)(4);
- d. Revise paragraph (m)(4)(xii); and
- e. Revise paragraphs (m)(5) and (m)(6).

The addition and revisions read as follows:

§ 225.15 Management responsibilities of sponsors.

(a) * * *

(4) Sponsors must maintain documentation of a nonprofit food service. Program reimbursements and expenditures may be included in a single nonprofit food service account with funds from any other Child Nutrition Programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, except the Special Supplemental Nutrition Program for Women, Infants, and Children. All Program reimbursement funds must be used solely for the conduct of the food service operation. The net cash resources of the nonprofit food service of each sponsor participating in the Program may not exceed three months' average expenditures. State agency approval shall be required for net cash resources in excess of three months' average

expenditures. Sponsors shall monitor Program costs and take action to improve the meal service or other aspects of the Program if actual costs are less than the anticipated reimbursement.

* * * * *

(c) * * * (1) Sponsors shall maintain accurate records of all costs associated with the meal service and document that all costs are allowable. * * *

* * * * *

(m) * * *

(4) * * * Sponsors that are schools or school food authorities and have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed the small purchase threshold in 41 U.S.C 403(11), shall not be required to comply with these procedures. * * *

* * * * *

(xii) All bids in an amount which exceeds the lowest bid and all bids totaling the amount specified in the small purchase threshold in 41 U.S.C 403(11), or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(5) Each food service management company which submits a bid exceeding the small purchase threshold in 41 U.S.C. 403(11), shall obtain a bid bond in an amount not less than 5 percent nor more than 10 percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(6) Each food service management company which enters into a food service contract exceeding the small purchase threshold in 41 U.S.C. 403(11), with a sponsor shall obtain a performance bond in an amount not less than 10 percent nor more than 25 percent of the value of the contract

for which the bid is made, as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds the small purchase threshold in 41 U.S.C. 403(11). Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

* * * * *

12. In § 225.17, add paragraph (f) to read as follows:

§ 225.17 Procurement standards.

* * * * *

(f) All contracts in excess of \$10,000 must contain a clause allowing termination for cause and for convenience by the sponsor including the manner by which it will be effected and the basis for settlement.

Audrey Rowe
Administrator
Food and Nutrition Service

April 14, 2013

Date

